

**HOUSE JOURNAL
61ST LEGISLATURE
ADDENDUM
61ST LEGISLATURE**

Helena, Montana
2009

House Chambers
State Capitol

COMMUNICATIONS AND PETITIONS

The House journals for the 89th and 90th days have been found to be correct, signed and filed with the Secretary of State.

MESSAGES FROM THE SENATE

Free Conference Committee Report No.1 adopted:

4/28/2009

HB 1, introduced by Balyeat

HB 2, introduced by Sesso

HB 645, introduced by Sesso

HB 658, introduced by Jopek

HB 676, introduced by Sesso

MESSAGES FROM THE GOVERNOR

April 29, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill 629, "**AN ACT PROVIDING THAT ANY SCHOOL TRUST LAND INTEREST AND INCOME IN EXCESS OF \$1 MILLION MUST BE DEPOSITED IN THE SCHOOL FLEXIBILITY ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 20-9-342, AND 20-9-542, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.**"

Pursuant to a trigger mechanism tied to the legislature's revenue estimate, House Bill 629 diverts money that otherwise would be deposited in the guarantee account (codified at § 20-9-342, MCA) for distribution to school districts through state equalization aid, and instead directs the

HOUSE JOURNAL
ADDENDUM
61ST LEGISLATURE

deposit of that money in the school flexibility account (codified at § 20-9-542, MCA), outside the state's funding formula for K-12 public schools, which could be used by school districts for broad miscellaneous purposes.

While I understand that schools may welcome the potential distribution of money under House Bill 629, my objection is that the redistribution of funds provided for in the bill is contrary to virtually all the deliberate and targeted actions supported by my Administration and taken by the Legislature to rectify the deficiencies in Montana's school funding formula identified by the Montana Supreme Court in *Columbia Falls Elementary School District No. 6 v. State of Montana*, 2005 MT 69. Although the legal challenge has been resolved, our responsibility to adhere to the constitutional requirement that the legislature provide "a basic system of free quality public elementary and secondary schools" remains. Mont. Constit. Article X, section 1(3); § 20-9-309, MCA.

Montana's guarantee account is a cornerstone of Montana's school funding formula. By statute, it "is intended to: (a) stabilize the long-term growth of the permanent fund [the public school fund provided for in Article X, section 2 of the Montana Constitution]; and (b) maintain a constant and increasing distributable revenue stream [to school districts]." § 20-9-342(1), MCA. I believe the diversion of potentially significant amounts of interest and income from the guarantee fund to the flex fund is a significant setback to the work we have accomplished in the last four years to establish a school funding formula that was upheld by a state district court and is a shortsighted investment of money in ways not tied to Montana's school funding formula.

I ask that you sustain my veto of House Bill 629 for the important legal, policy, and fiscal reasons stated above.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

April 29, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

STATE INTERNET/BBS COPY

HOUSE JOURNAL
ADDENDUM
61ST LEGISLATURE

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 460, **“AN ACT PROVIDING FOR A FEDERAL ECONOMIC STIMULUS PROGRAM OVERSIGHT COMMISSION; PROVIDING FOR MEMBERS AND DUTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.”**

The Legislature has passed House Bill 645, the bill to appropriate approximately \$880 million in federal stimulus funding for Montana. Federal stimulus funding equates to roughly 10% of the state’s entire budget for the 2011 biennium. Senate Bill 460, sponsored by Senator Story, creates a special Economic Stimulus Program Oversight Commission to “oversee” the distribution and use of any federal economic stimulus program funds. My decision to veto this bill is based on two primary factors.

First, I believe the creation of a new Commission is unnecessary and a waste of taxpayer money. Any legislative review of the expenditure of federal stimulus dollars can be accomplished equally effectively by existing legislative committees, such as the Legislative Finance Committee and the Legislative Audit Committee. As explained above, federal stimulus money comprises only about 10% of the entire state budget, and, as required by federal law, the vast majority of the federal stimulus dollars are appropriated to existing programs. It escapes me why an entire new Commission is necessary to oversee the expenditure of this money, which by and large is appropriated to existing programs.

Second, I object to particular duties of the Commission described in Senate Bill 460. Specifically, the bill provides that the Commission may establish a website to foster greater accountability and transparency. However, the American Recovery and Reinvestment Act (“ARRA”), itself, contains requirements for accountability and transparency, for which I, as Governor, and head of the executive branch, am accountable. Pursuant to the requirements of the ARRA, my administration has already created a website, and is investing in tools to enhance the website, which comport with federal law and guidance concerning transparency. The site can be found on the internet at <http://recovery.mt.gov/default.mcp.x>. I believe a website created by the Commission would not only be confusing to the public but would be an unnecessary duplication of the required site that is already in existence. This, itself, would be a waste of taxpayer resources.

Similarly, Senate Bill 460 directs the Commission to “determine the transparency in bidding and the contracting process.” A major feature of the ARRA is its strict requirements concerning transparency and accountability, and federal agencies will be monitoring Montana’s compliance with those requirements. As stated, the executive has already begun complying through creation of the website referred to above. Indeed, if Montana does not comply with federal transparency requirements, the state runs the risk of losing these federal dollars. Additionally, Montana procurement laws already provide standards related to the transparency of state contracts. It is

HOUSE JOURNAL
ADDENDUM
61ST LEGISLATURE

unclear what benefit would be provided by creating a Commission to “determine” these matters, where there are numerous safeguards already in place to assure transparency in the spending of the federal stimulus money.

Finally, I find it inappropriate to falsely empower a Commission to determine the “adequacy of public notice and opportunity for comment and input” with respect to the spending of federal stimulus dollars when the Montana Constitution and Montana statutes are abundantly clear about these requirements. Appropriate public notice and comment is a constitutional right of Montanans to which my administration adheres. Senate Bill 460 suggests otherwise, and I oppose that aspect of it, as well..

Notwithstanding my objections to particular provisions of Senate Bill 460, as stated above, I anticipate that existing legislative committees, with their existing resources, will conduct much of the work assigned under the bill to be performed by the Commission. For example, I expect the legislative branch will watch to ensure legislative intent in funding projects is being followed, projects are being coordinated, and waste and duplication is avoided. I commit to you that within the framework established by the Montana Constitution and existing laws, my administration will work with the legislative branch as these federal dollars are spent to ensure that the Legislature has the information it needs to perform its duties under the law.

I ask for your support in sustaining my veto of Senate Bill 460.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

April 29, 2009

The Honorable Bob Bergren
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Representative Bergren:

Please be informed that I have signed the following bills:
24, 2009

April

HOUSE JOURNAL
ADDENDUM
61ST LEGISLATURE

House Bill 42 sponsored by Representative Reinhart,
House Bill 238 sponsored by Representative Milburn,
House Bill 262 sponsored by Representative Ebinger et al.,
House Bill 269 sponsored by Representative Mehlhoff et al.,
House Bill 306 sponsored by Representative Morgan,
House Bill 318 sponsored by Representative Kottel,
House Bill 322 sponsored by Representative Blewett et al.,
House Bill 356 sponsored by Representative Wagner,
House Bill 384 sponsored by Representative Villa,
House Bill 449 sponsored by Representative McChesney,
House Bill 487 sponsored by Representative McNutt et al.,
House Bill 562 sponsored by Representative Cohenour,
House Bill 585 sponsored by Representative McClafferty et al.,
House Bill 622 sponsored by Representative Himmelberger,
House Bill 630 sponsored by Representative Sands et al.,
House Bill 653 sponsored by Representative Pomnichowski et al.,
Senate Bill 8 sponsored by Senator Hansen,
Senate Bill 73 sponsored by Senator Hawks,
Senate Bill 79 sponsored by Senator Juneau,
Senate Bill 86 sponsored by Senator J. Tropila,
Senate Bill 108 sponsored by Senator Jent,
Senate Bill 198 sponsored by Senator Lewis et al.,
Senate Bill 231 sponsored by Senator Laible,
Senate Bill 234 sponsored by Senator Gillan et al.,
Senate Bill 281 sponsored by Senator Shockley et al.,
Senate Bill 350 sponsored by Senator Gillan,
Senate Bill 430 sponsored by Senator Hamlett et al.,
Senate Bill 442 sponsored by Senator Laslovich.

Please be informed that I have signed the following bills:
26, 2009

April

House Bill 608 sponsored by Representative Sesso
House Bill 628 sponsored by Representative Stoker.

Please be informed that I have signed the following bills:
27, 2009

April

House Bill 150 sponsored by Representative D. Brown,
House Bill 228 sponsored by Representative Kerns et al.,
Senate Bill 356 sponsored by Senator Zinke,
Senate Bill 451 sponsored by Senator Wanzenried et al.,
Senate Bill 462 sponsored by Senator Steinbeisser,

HOUSE JOURNAL
ADDENDUM
61ST LEGISLATURE

Senate Bill 464 sponsored by Senator Laslovich et al.

Please be informed that I have signed the following bills:
28, 2009

April

House Bill 4 sponsored by Representative Jones,
House Bill 6 sponsored by Representative McNutt,
House Bill 7 sponsored by Representative McNutt,
House Bill 8 sponsored by Representative McNutt,
House Bill 55 sponsored by Representative Hawk,
House Bill 108 sponsored by Representative Hollenbaugh,
House Bill 110 sponsored by Representative Sesso,
House Bill 128 sponsored by Representative Sesso,
House Bill 152 sponsored by Representative Hamilton,
House Bill 171 sponsored by Representative Augare,
House Bill 224 sponsored by Representative Hiner et al.,
House Bill 258 sponsored by Representative McChesney,
House Bill 312 sponsored by Representative B. Beck et al.,
House Bill 315 sponsored by Representative Blewett et al.,
House Bill 333 sponsored by Representative P. Noonan et al.,
House Bill 478 sponsored by Representative Grinde,
House Bill 578 sponsored by Representative Caferro,
House Bill 583 sponsored by Representative Fleming et al.,
House Bill 615 sponsored by Representative MacLaren et al.,
House Bill 634 sponsored by Representative McAlpin et al.,
House Bill 636 sponsored by Representative Dickenson et al.,
House Bill 655 sponsored by Representative Belcourt et al.,
House Bill 656 sponsored by Representative Stahl,
Senate Bill 18 sponsored by Senator Wanzenried,
Senate Bill 38 sponsored by Senator Curtiss,
Senate Bill 48 sponsored by Senator Essmann,
Senate Bill 55 sponsored by Senator Steinbeisser,
Senate Bill 97 sponsored by Senator Wanzenried,
Senate Bill 131 sponsored by Senator Williams,
Senate Bill 176 sponsored by Senator Perry,
Senate Bill 204 sponsored by Senator Moss et al.,
Senate Bill 214 sponsored by Senator Steinbeisser et al.,
Senate Bill 260 sponsored by Senator Gillan et al.,
Senate Bill 264 sponsored by Senator Brueggeman,
Senate Bill 271 sponsored by Senator Squires et al.,
Senate Bill 303 sponsored by Senator Wanzenried,
Senate Bill 305 sponsored by Senator Tutvedt et al.,

HOUSE JOURNAL
ADDENDUM
61ST LEGISLATURE

Senate Bill 310 sponsored by Senator Shockley et al.,
Senate Bill 369 sponsored by Senator Esp,
Senate Bill 404 sponsored by Senator Brueggeman et al.,
Senate Bill 427 sponsored by Senator Laslovich,
Senate Bill 457 sponsored by Senator Branae,
Senate Bill 467 sponsored by Senator Balyeat,
Senate Bill 491 sponsored by Senator Lewis,
Senate Bill 508 sponsored by Senator Brueggeman et al.,
Senate Bill 511 sponsored by Senator Cooney.

Sincerely,

BRIAN SCHWEITZER
Governor

HOUSE JOURNAL
ADDENDUM
61ST LEGISLATURE

BRIAN SCHWEITZER
GOVERNOR

May 4, 2009

Senator Bob Story, President
Montana Senate
Capitol Building
Helena, MT 59620

Representative Bob Bergren, Speaker
Montana House of Representatives
Capitol Building
Helena, MT 59620

Dear President Story and Speaker Bergren:

The following bills were returned, without signature, to the Secretary of State today, Monday, May 4, 2009.

House Bill 173 sponsored by Representative Hendrick,
House Bill 418 sponsored by Representative Butcher et al.,
House Bill 459 sponsored by Representative Grinde et al.,
House Bill 464 sponsored by Representative O'Hara et al.,
House Bill 657 sponsored by Representative Stahl,
House Bill 659 sponsored by Representative Roberts et al.,
House Bill 670 sponsored by Representative Vincent,
Senate Bill 158 sponsored by Senator Barkus et al.,
Senate Bill 300 sponsored by Senator Steinbeisser,
Senate Bill 396 sponsored by Senator Story.

Sincerely,

BRIAN SCHWEITZER
Governor

HOUSE JOURNAL
ADDENDUM
61ST LEGISLATURE

BRIAN SCHWEITZER
GOVERNOR

May 5, 2009

Senator Bob Story, President
Montana Senate
Capitol Building
Helena, MT 59620

Representative Bob Bergren, Speaker
Montana House of Representatives
Capitol Building
Helena, MT 59620

Dear President Story and Speaker Bergren:

You will find attached a list of bills that I signed today, May 5th, 2009. All have been delivered to the Secretary of State..

House Bill 3 sponsored by Representative Ankney,
House Bill 10 sponsored by Representative Wiseman,
House Bill 52 sponsored by Representative McNutt,
House Bill 85 sponsored by Representative Sands,
House Bill 97 sponsored by Representative Boland,
House Bill 98 sponsored by Representative Barrett,
House Bill 135 sponsored by Representative Belcourt,
House Bill 154 sponsored by Representative Bergren,
House Bill 194 sponsored by Representative Mendenhall,
House Bill 301 sponsored by Representative Kottel,
House Bill 332 sponsored by Representative Getz et al.,
House Bill 483 sponsored by Representative Jones et al.,
House Bill 486 sponsored by Representative Maclaren,
House Bill 531 sponsored by Representative Nooney,
House Bill 536 sponsored by Representative Malek et al.,
House Bill 557 sponsored by Representative Belcourt,
House Bill 598 sponsored by Representative Noonan,
House Bill 662 sponsored by Representative Arntzen,

Senate Bill 119 sponsored by Senator Esp,
Senate Bill 235 sponsored by Senator Murphy et al.,

HOUSE JOURNAL
ADDENDUM
61ST LEGISLATURE

Senate Bill 290 sponsored by Senator Jackson et al.,
Senate Bill 400 sponsored by Senator Laslovich,
Senate Bill 446 sponsored by Senator Story.

Sincerely,

BRIAN SCHWEITZER
Governor

May 5, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 371, **“AN ACT REVISING THE DEFINITION OF "EMPLOYEE" OR "WORKER" WITH RESPECT TO WORKERS' COMPENSATION LAWS; CLARIFYING INJURIES THAT MAY NOT BE CONSIDERED AS ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT; AMENDING SECTIONS 39-71-118 AND 39-71-407, MCA; AND PROVIDING AN EFFECTIVE DATE.”**

Senate Bill 371 establishes a statutory definition for certain injuries that do not arise out of and in the course and scope of employment for purposes of workers' compensation coverage. The definition focuses on injuries that have occurred during breaks and employment-related social events. Presently, in Montana, the determination of whether an employee's injury arises out of and in the course and scope of employment is not codified but is determined based on a four-part test that is derived from well-established common law principles in the area of workers' compensation law. Under the four-part test, coverage is determined based on whether the activity was undertaken at the employer's request, whether the employer compelled the employee's attendance at the activity, whether the employer controlled or participated in the activity, and whether the employer and employee mutually benefitted from the activity. *See, e.g., Courser v. Darby School Dist.*, 214 Mont. 13, 16-17, 692 P.2d 417, 419 (1984). The Montana Supreme Court has repeatedly affirmed that no one factor is determinative in the analysis. Rather, the determination of whether an injury arose during the course and scope of the employment must be based on the “totality of the circumstances.”

HOUSE JOURNAL
ADDENDUM
61ST LEGISLATURE

To my understanding, Senate Bill 371 was introduced primarily in response to two decisions by the Montana Supreme Court, involving unusual fact patterns, that were objected to by workers' compensation insurers. Based on the opinion of representatives I consulted from the Montana Department of Labor and Industry, I proposed an amendatory veto of the bill to affirm that the bill was consistent with generally recognized principles in workers' compensation law. The Legislature rejected my amendments, thereby raising questions as to the bill's intent and effect. In fact, I have heard varying and diverse opinions expressed as to whether the outcome of the two decisions objected to by the insurers would be altered by passage of the legislation. With the above history in mind, I have vetoed this bill because I do not believe it would be helpful – for either workers or employers – to reverse well-settled law and legal principles in Montana regarding workers' compensation coverage. For workers, a change in the law would create uncertainty, possible denial of coverage, and unnecessary litigation until the new definitions were interpreted by the courts. For employers, too, a change in the law would result in uncertainty. Additionally, absent workers' compensation coverage, employers would face the possible greater liability exposure under tort theories of recovery. From the discussions among legislators, alone, one thing is clear: there is not unanimity of opinion as to the effects of this legislation.

Last summer, the Labor-Management Advisory Council on Workers' Compensation within the Department of Labor and Industry, chaired by Lieutenant Governor John Bohlinger, considered the advisability of legislation to address the matters covered by Senate Bill 371. The Advisory Council, containing equal representation from labor and management, did not reach agreement on legislation. In fact, the Advisory Council's conclusions reflected the same concerns with the legislation as those I expressed above, namely that coverage issues are fact-specific, Montana's case law is consistent with the case law from other states, and the effect of the court decisions and legislation – in terms of costs and impacts to workers – were unknown. The recommendations of this Advisory Council are persuasive in my decision to veto the bill, as well.

Finally, I mention that the Legislature passed Senate Joint Resolution 30, requesting an interim study to examine, among other things, the premium cost drivers to workers' compensation insurance in Montana, as compared to other Western states with similar industries. Assuming this issue will be studied by the Legislature, my administration looks forward to working with the interim committee to continue to look at not only the narrow issues raised in this bill but, more importantly, the larger picture as to how workers' compensation costs can be kept down in Montana.

For the reasons expressed above, I ask for your support to sustain my veto of Senate Bill 371.

Sincerely,

HOUSE JOURNAL
ADDENDUM
61ST LEGISLATURE

BRIAN SCHWEITZER
GOVERNOR

May 14, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby deliver to you House Bill 645, "AN ACT IMPLEMENTING THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 . . .," which I have signed into law with items "struck out," or vetoed.

I cannot fairly discuss House Bill 645, the bill to implement the federal stimulus act in Montana, without also commenting upon House Bill 2, the general appropriations act to fund Montana state government for the coming biennium. Combined, I commend the 61st Legislature for passing a fiscally prudent budget through which Montana will live within its means while investing in important programs, such as the voter-passed children's health initiative and Montana's K-12 public schools. Of equal significance, when I submitted my proposed budget to the 61st Legislature for its consideration, I requested an ending fund balance of \$250 million. I am pleased that with passage of these two bills, more than \$250 million remains in the state's savings account in the event the State's actual revenues fall short of current projections.

Turning to House Bill 645, my item vetoes fall into three general categories: the first allows me to exercise my constitutional authority to veto items and actually see a reduction in state expenditures; the second reduces state spending by more than \$4.5 million on items which I believe are unnecessary or excessive; and the third relates to provisions in the bill which I believe are constitutionally infirm. What follows is an explanation for each individual item veto.

First, section 83 of House Bill 645 (page 56) is what I refer to as a general "re-appropriation" provision. It states that any specific item of appropriation that is vetoed or voided in the appropriations section (section 85) of the bill will be automatically appropriated to counties, cities, tribes, and schools under the formula contained in section 57. Absent my veto of section 83, my item vetoes of specific appropriations would not reduce spending in House Bill 645, but

HOUSE JOURNAL
ADDENDUM
61ST LEGISLATURE

would lead to their “re-appropriation” to local governments and Montana tribes. My goal in issuing the item vetoes is to reduce state spending, not to redirect the money to enable other governmental entities to spend it.

Second, I have vetoed the following appropriations, and accompanying narrative provisions:

Welcome Home Loan Program, \$2 million state special revenue (page A-3; sections 60 and 61, pages 49 and 50): While the language establishing this new program would lead the undiscerning reader to believe its purpose was to assist first-time home buyers, the program actually is set up to protect financial lenders by shifting the risk of certain home loans exclusively to the State. Under this temporary, new program, lenders, such as banks, could loan money to first-time home buyers for down payments and closing costs to be pledged with federal tax credits. If home buyers failed to repay their loans by June 30, 2010, the State of Montana would be obligated to purchase those loans before August 1, 2010. The effect would be that the State would step into the shoes of the lender holding a defaulted loan obligation – not a particularly desirable position. Furthermore, the State, as a creditor, would be in a subordinate position to the mortgage lender, which would be the first lien holder. To summarize, though billed as a program to assist home buyers, the real effect of the program would be to benefit lending institutions by shifting all risk on these loans to the State. I also note that the State of Montana already has a first-time home buyer program that has been in existence since 1977, and that program is well-run and sufficiently funded.

Rail Transit Authority, \$99,354 state general fund (page C-2): As you know, I have vetoed Senate Bill 291, establishing a Montana Railroad Development Authority. The item vetoed in House Bill 645 would fund the Authority, which I do not support, for the reasons previously stated in my veto message to Senate Bill 291.

Meth Watch, \$500,000 state general fund (pages D-1 and D-2): The Montana Meth Project, a private undertaking, first approached me for state funding as I was preparing my budget to present to the 2007 Legislature for its consideration. Then, I was asked to support “seed money” for the project that was to become self-sustaining. My proposed budget included \$1 million for the Meth Project, and the 2007 Legislature appropriated that amount for the program for the biennium. The Meth Project has not become self-sustaining, and I was asked before the 2009 session to again include money for the project in my proposed budget. A representative of the Montana Meth Project informed me that its annual budget is \$2.1 million, and I included \$500,000 of state funding for the project in my proposal to the Legislature. Additionally, Congress recently appropriated \$1 million for the Montana Meth Project, and, consistent with my original proposal, House Bill 2, which will become law, appropriates \$500,000 to the project for the coming biennium. Again, given these economically difficult times, I do not believe the additional appropriation to this program of \$500,000 in state general funds contained in House Bill 645 is warranted, and for this reason I have vetoed that appropriation. With this item veto,

HOUSE JOURNAL
ADDENDUM
61ST LEGISLATURE

the meth project will need to move toward its own goal of become self-sustaining and raise \$600,000 through private fundraising to reach its projected budget, or, like the rest of us, tighten its belt and manage with less.

Agriculture Experiment Station - Equipment and Infrastructure, \$2 million state general fund (page E-4): House Bill 2 appropriates over \$24 million to Montana's Agriculture Experiment Stations. Particularly in these difficult economic times, I do not believe the additional \$2 million of general fund appropriations to the Agriculture Experiment Stations in House Bill 645 are necessary. I have asked parents, students, the disabled, and others across the state to tighten their belts and live within their means. I am Montana's first, and the nation's only, agricultural researcher and scientist to serve as governor and, naturally, agricultural research is close to my heart. Despite that fact, I am directing that these state-funded agriculture programs limit their expenditures and live within their means, just as the rest of Montana must do.

Third, I have issued one item veto in order to simplify the accounting and tracking of House Bill 13, the state pay plan bill, for the state's budget analysts. Both House Bill 645 and House Bill 13 contain certain identical appropriations to implement House Bill 13, although only one set of these appropriations will become law. I vetoed the duplicate provisions found in House Bill 645 (section 75, pages 54 and 55, and page A-1), and, as a result, all the appropriations to implement the pay plan bill will be contained in the pay plan bill, itself, House Bill 13.

My final item vetoes are found scattered throughout House Bill 645, and strike language that I believe is constitutionally defective. In six instances, House Bill 645 contains narrative that would have either voided or reduced appropriations to programs located in all three branches of government had Senate Bill 100, an unrelated bill, not become law.

Senate Bill 100, increasing distribution of coal severance tax revenue to counties, became law without my signature. Had Senate Bill 100 not passed the legislature, or had I successfully vetoed Senate Bill 100, under the objectionable language found in House Bill 645, the demise of Senate Bill 100 would have reduced or eliminated appropriations to the legislative branch for committee work, the judicial branch for its self-help law program, and three executive branch departments for areas as diverse as worker training, historic preservation, public health standards, and information technology. Thus, funding for these six programs, which are unrelated to the coal tax distribution to counties found in Senate Bill 100, was held "hostage" to the passage of Senate Bill 100.

The Montana Constitution's "single subject" requirement prohibits the legislature from placing a "rider" in one bill in order to hold it hostage dependent upon the outcome of a separate, unrelated bill. My item veto authority, which I have exercised with regard to these objectionable provisions, extends to the veto of "riders." *Cobb v. Schweitzer*, Cause No. CDV-2005-320, Memorandum and Order of December 21, 2006, Montana First Judicial District Court, Lewis

HOUSE JOURNAL
ADDENDUM
61ST LEGISLATURE

and Clark County. I believe the provisions linking the funding of the six unrelated programs to passage or failure of Senate Bill 100 are constitutionally impermissible riders.

I have taken the step of exercising this item veto authority as a notice to the Legislature of my constitutional objections to these provisions. I note that in 2007, I also observed similar provisions in bills winding their way through the Legislature, however those constitutionally problematic “contingent voidness” provisions did not reach my desk. While I recognize that there is a proper use of “contingent voidness” provisions in legislation, when those provisions are contained in wholly unrelated pieces of legislation, are outside the “single subject” rule, and are for purposes solely of political leveraging, I do not believe they meet the constitutional standard. To the extent these objectionable provisions were inserted into House Bill 645 to effect my decision on whether to sign, veto, or let become law Senate Bill 100, I also believe they encroached upon my veto authority. So that you also know, my decision to let Senate Bill 100 become law was in no way based upon these troubling provisions in House Bill 645.

In closing, I thank the Legislature for doing its job. Now it is time for me to continue with the business of running the executive branch of government within the policy and budget framework the Legislature established for the State of Montana for the next two years.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division

HOUSE JOURNAL
ADDENDUM
61ST LEGISLATURE

June 8, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

This letter is to notify you of the final status of the veto polls conducted by my office with regard to the following bills:

◆ House Bill 629	◆ Senate Bill 349
◆ Senate Bill 291	◆ Senate Bill 460

The voting deadline for the aforementioned bills was June 5, 2009. At least two-thirds of the legislators in each house must vote to approve the override of the Governor's veto in order for vetoed bill(s) to become law. Two-thirds equals at least 67 members of the House, and at least 34 members of the Senate.

None of the respective bill vetoes were overridden. Please find enclosed the complete roll call vote for the veto poll of each bill.

Thank you for your cooperation throughout this process. If you have questions or comments, please contact me at (406) 444-4195 or at lmcculloch@mt.gov. You may also contact the Elections and Government Services Division by phone at (406) 444-4732 or by e-mail at sstevens@mt.gov.

Sincerely,

Linda McCulloch
Secretary of State

HOUSE JOURNAL
ADDENDUM
61ST LEGISLATURE

June 15, 2009

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

This letter is to notify you of the final status of the veto polls conducted by the Secretary of State with regard to the following bill(s):

◆ Senate Bill 371 ◆ Senate Bill 403

The voting deadline for the aforementioned bills was June 11, 2009. At least two-thirds of the legislators in each house must vote to approve the override of the Governor's veto in order for vetoed bill(s) to become law. Two-thirds equals at least 67 members of the House, and at least 34 members of the Senate.

Neither of the respective bill vetoes were overridden. Please find enclosed the complete roll call vote for the veto poll of each bill.

Thank you for your cooperation throughout this process. If you have questions or comments, please contact me at (406) 444-4195 or at lmcculloch@mt.gov. You may also contact the Elections and Government Services Division by phone at (406) 444-4732 or by e-mail at ssstevens@mt.gov.

Sincerely,

Linda McCulloch
Secretary of State

HOUSE JOURNAL
ADDENDUM
61ST LEGISLATURE

DAVE HUNTER
Chief Clerk of the House

BOB BERGREN
Speaker of the House